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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SEVEN

THE PEOPLE,

Plaintiff and Respondent,

v.

RUBEN GERARDO ROBLES,

Defendant and Appellant.

B215349

(Los Angeles County  
Super. Ct. No. KA085118)

APPEAL from a judgment of the Superior Court of Los Angeles County,  
Bruce F. Marrs, Judge. Appeal dismissed.

John L. Staley, under appointment by the Court of Appeal, for Defendant and  
Appellant.

No appearance by Plaintiff and Respondent.

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After watching defendant Ruben Gerardo Robles struggle to maintain his balance while riding a bicycle, police officers approached. Defendant stopped riding and dropped a clear plastic bag containing methamphetamine. Defendant was charged by information on December 31, 2008, with one count of possession of a controlled substance (Health & Safety Code, § 11377, subd. (a)). It was further alleged defendant had suffered a prior serious or violent felony conviction within the meaning of the “Three Strikes” law (Pen. Code, §§ 667, subds. (b)-(i), 1170.12, subds. (a)-(d)), and had served three separate prison terms for felonies (Pen. Code, § 667.5, subd. (b)).

On December 31, 2008, represented by appointed counsel, defendant made a motion to dismiss the prior strike conviction (Pen. Code, § 1385; *People v. Superior Court (Romero)* 13 Cal.4th 497), which the trial court heard and denied. Defendant agreed to enter a plea of no contest and to admit the 1988 conviction for residential burglary as a prior strike conviction in return for an aggregate state prison sentence of 32 months. The remaining prior prison term allegations were to be dismissed.

At the time defendant entered his plea, he was advised of his constitutional rights and the nature and consequences of his plea orally and in writing.<sup>1</sup> The prosecutor reiterated that defendant would be admitting the 1988 conviction residential burglary as a prior strike conviction. Defendant stated he understood and waived his constitutional rights, acknowledged he understood the consequences of his plea and admissions and accepted the terms of the negotiated agreement.

Defense counsel joined in the waivers of defendant’s constitutional rights and concurred in the plea admissions. Defense counsel stipulated to, and the court found, a factual basis for the plea based on the preliminary hearing transcript. The trial court

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<sup>1</sup> At the plea hearing the court referred to a “felony advisement of rights, waiver and plea form,” and asked defendant if he had initialed the boxes and signed the form. Defendant said he had. The court then inquired whether defendant initialed and signed the form to indicate he had read and understood the form, and had agreed to each of its written terms and conditions. Defendant answered, “Yes sir.” The written form is part of the record on appeal.

accepted the plea and found defendant had voluntarily, knowingly and intelligently waived his constitutional rights and entered his plea and admissions.

Pursuant to the agreement, defendant was sentenced to 16 months in state prison doubled under the Three Strikes law. The court ordered defendant to pay a \$20 court security fee, a \$200 restitution fine, and a \$50 laboratory fee. The court also imposed and suspended a parole revocation fine pursuant to Penal Code section 1202.45. The court dismissed the remaining special allegations on the People's motion. Defendant was awarded a total of 76 days presentence credit (51 actual days and 26 days of conduct credit).

Defendant filed a notice of appeal,<sup>2</sup> seeking to withdraw his plea on the ground the People "illegally included both felony convictions" as part of his negotiated plea in violation of section 667, subdivision (g).<sup>3</sup> Defendant also contends his defense counsel coerced him into accepting the negotiated plea. He did not obtain a certificate of probable cause.

We appointed counsel to represent defendant on appeal. After an examination of the record, counsel filed an opening brief in which no issues were raised. On July 30, 2009, we advised defendant he had 30 days in which to personally submit any contentions or issues he wished us to consider. No response has been received to date.

We have examined the entire record and are satisfied defendant's attorney has fully complied with the responsibilities of counsel and no arguable issues exist. (*Smith v.*

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<sup>2</sup> For his notice of appeal, defendant used an "Inmate/Parolee Appeal Form," which he submitted to prison authorities rather than the superior court. Rather than forward the document to the superior court, prison authorities returned it to him for mailing to the superior court, resulting in further delay. Under the circumstances, we deem defendant's notice of appeal constructively timely filed under the "prison delivery rule." (Cal. Rules of Court, rule 30.1; *In re Jordan* (1992) 4 Cal.4th 116, 125-126, 130.)

<sup>3</sup> Penal Code section 667, subdivision (g) prohibits prior serious felony conviction allegations from being dismissed as part of a negotiated plea unless requested by the People in furtherance of justice or a found by the court to be based on insufficient evidence.

*Robbins* (2000) 528 U.S. 259, 277-284 [120 S.Ct. 746, 145 L.Ed.2d 756]; *People v. Kelly* (2006) 40 Cal.4th 106, 112-113; *People v. Wende* (1979) 25 Cal.3d 436, 441.)

A criminal defendant who appeals following a plea of no contest or guilty without a certificate of probable cause can only challenge the denial of a motion to suppress evidence or raise grounds arising after the entry of the plea that do not affect its validity. (Cal. Rules of Court, rule 8.304(b).) In his notice of appeal, defendant is challenging the validity of his plea or admissions as well as the validity of his sentence imposed as part of his plea. Notwithstanding the fact his claims are without a legal basis (Penal Code section 667, subdivision (g) is inapplicable) or factual support (no suggestion in the record his oral and written plea and admissions were not voluntary as found by the trial court), because defendant is attacking the validity of his plea, his notice of appeal is inoperative; and the appeal must be dismissed. (Pen. Code, § 1237.5; see *People v. Shelton* (2006) 37 Cal.4th 759, 769-771; *People v. Panizzon* (1996) 13 Cal.4th 68, 79.)

The appeal is dismissed.

ZELON, J.

WOODS, Acting P. J.

JACKSON, J.